THE HON'BLE Ms. JUSTICE G. ROHINI

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WRIT PETITION NO.2254 OF 2006

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Dated: 26th OCTOBER, 2006.

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Between :

M/s. Tirumala Granites & Exports,
Rep., by its Proprietor, Sri C. Ram Kumar,
Sagampet, Kadapa Town,
Kadapa District.

… Petitioner

And

The Regional Principal Chief Conservator Forest
Ministry of Environment and Forests,
Regional Office(Southern Zone),
Fourth Floor, Kendriya Sadan, E& F Wing,
17th Main Road, II Block, Koramangala,
Banglore and 7 others.

... Respondents

THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION NO. 2254 OF 2006

ORDER :

This writ petition is filed seeking a declaration that the alleged action of the respondents 1 to 4 in not processing the application of the petitioner dated 17-07-2001 for prior approval for grant of quarry lease in Compartment No.213, Paradarami Reserve Forest, Yadammari Mandal, Chittoor West Division, Chittoor District is arbitrary and illegal.

At the outset it is to be noted that in exercise of the powers conferred by Section 4 of the Forest Conservation Act, 1980 (for short 'the Act'), the Central Government, under GSR.719, dated 20-07-1981 made Forest (Conservation) Rules, 1981 (for short, 'the Rules). Rule 4 of the said Rules provides that every State Government or other authority which seeks prior approval under Section 2 of the Act shall send its proposal to the Central Government (Ministry of Environment & Forests) in the form appended to the said Rules. Thereupon, the Central Government may refer such proposal to the Advisory Committee for its advice and after considering such advice and after making necessary further enquiry grant approval to the proposal or reject the same.

However, a new set of Rules were made in GSR.23 (E) dated 10-01-2003 in supersession of the earlier Rules, dated 20-07-1981. As per Rule 6 of the new Rules, which came into force with effect from 10-01-2003, every user agency who wants to use any forest land for non-forest purpose shall make its proposal in the appropriate form appended to the Rules to the concerned Nodal

Officer authorized by the State Government along with the requisite information and documents, well in advance for taking up of any non-forest activity on the forest land. As per Sub-rule (2) of Rule 6, every State Government after receiving the proposal from the user agency and after being satisfied that the proposal requires prior approval of the Central Government under Section 2 of the Act shall send the proposal to the Central Government in appropriate form within 90 days of the receipt of the proposal from the user agency. Thereafter, after following the procedure prescribed under Rule 7 with regard to referring the proposal to the Advisory Committee constituted under Section 3 of the Act, the Central Government on the basis of the advice and after such further enquiry may grant approval or reject the proposal within 60 days of its receipt. It is not in dispute that the Principal Chief Conservator of Forests is the Nodal Officer authorized by the State Government.

In the case on hand, the petitioner made an application on 17-07-2001 to the Assistant Director of Mines & Geology, Chittoor for grant of quarry licence under Rule 5(2) of the Rules in Compartment No.213 of Paradarami Reserve Forest, Chittoor District. The petitioner claims that as per the statutory rules in force at the relevant point of time, the matter was referred to the Divisional Forest Officer, Chittoor by the Assistant Director of Mines & Geology, Chittoor for approval under the Act, however, thereafter he was not heard of anything till the year 2003. In the circumstances, in continuation of earlier application, the petitioner submitted another application in the revised proforma on 26-05-2003 to the Divisional Forest Officer, Chittoor West Division enclosing the consent letter for afforestation and a challan towards user charges. Having received the said application, the Divisional Forest Officer, Chittoor by letter dated 30-09-2003, informed the petitioner that in view of the new rules issued under the Act, he has to submit proposals in full shape to the Principal Chief Conservator of Forests, Andhra Pradesh, Hyderabad. Accordingly, the petitioner

submitted an application on
31-10-2003 to the Principal Chief Conservator of Forests, Andhra Pradesh, Hyderabad in 6 sets as required under the Rules. Thereafter, as directed by the Principal Chief Conservator of Forest, the petitioner had also furnished an undertaking for payment of Net present Value and the map showing the applied area by its letter dated 01-12-2003. Pursuant thereto, the petitioner was informed by the Divisional Forest Officer, Chittoor, West Division, Chittoor vide memo dated 28-12-2003 that the Principal Chief Conservator of Forest (Nodal Officer) has registered its application at Sl.No.63 and the Forest Range Officer would survey the area on the first come first served basis without overlapping with other applications.

While so, it came to the notice of the petitioner that the application of the 8th respondent which was made subsequent to the petitioner's application was registered at Sl.No.19 by the Nodal Officer and the same is being processed for clearance under Section 2 of the Act. The petitioner protested the same and got issued a legal notice dated 21-06-2005 to the respondents 1 and 2. In response, the second respondent-Principal Chief Conservator of Forests, by letter dated 28-06-2005 informed the petitioner that as per the instructions of the Government of India, the proposals have to be registered with the Forest Department whether submitted directly or sent through Mines Department and the files dealt by the Mines Department cannot be given priority over the proposals registered in the office of the Principal Chief Conservator of Forest.

Aggrieved by the said action of the respondents, this writ petition is filed contending *inter alia* that the action of the respondents in processing the application of the 8th respondent which was made on 29-08-2003 while keeping the petitioner's application dated 17-07-2001 pending is arbitrary and illegal. It is also contended that the application made by the petitioner on 17-07-2001 to the Mining Department as per the law existing at the relevant point of time cannot

be ignored since the new set of Rules requiring to make the application to the Nodal Officer have come into force much later with effect from 10-01-2003.

In the counter affidavit filed on behalf of the first respondent, it is stated that the application of the 8th respondent forwarded by the Principal Secretary to the Government of Andhra Pradesh, Environment, Forests, S&T Department for approval under the Act was received on 29-08-2003 and the same was registered at Sl.No.19 whereas the proposal of the petitioner was received on 06-11-2003 and the same was registered at Sl.No.63. Another proposal of one Mrs. Raghuram Minerals and Granites, which was also received on 06-11-2003 was registered at Sl.No.61. By letter dated 19-07-2005 the second respondent had also confirmed the same and accordingly it was decided to process the proposal of the 8th respondent, which was received much prior to the application of the petitioner.

On behalf of the respondents 2 to 4, a separate counter affidavit has been filed by the Divisional Forest Officer, Chittoor West Division stating that the petitioner submitted the application to the Principal Chief Conservator of Forest on 31-10-2003 as per the revised guidelines of the Act and the same was forwarded to the 3rd respondent by the 1st respondent vide letter dated 15-12-2003 assigning Sl.No.63 for survey and demarcation of the mining area proposed by the user agency. It is further alleged that in spite of the repeated letters addressed, the petitioner did not take any action for the purpose of locating and surveying the proposed mining area and therefore, the petitioner's matter could not be processed further.

The 8th respondent filed a counter affidavit on the same lines and further asserted that in W.P.No.14986 of 2005 filed by one M/s. Raghuram Minerals and Granites in respect of clearance of the very

same Reserved Forest land in Compartment No.213 of Paradarami Reserve Forest, it was admitted by the respondents that the 8th respondent's application at Sl.No.19 was prior in point of time as against the application of the petitioner therein which was given the Sl.No.61. The order in W.P.No.14986 of 2005 was also upheld by the Division Bench in W.A.No.115 of 2006 thus confirming the fact that the application of the 8th respondent (7th respondent therein) was received much prior in point of time.

I have heard the learned counsel for both parties in detail.

As noted above, the new set of Rules made under Section 4 of the Act came into force w.e.f. 10-01-2003. Admittedly, the 8th respondent made an application after the enforcement of the above Rules in the format prescribed. The Nodal Officer, who is the competent authority under the Rules, having received the same on 29-08-2003 registered the application of the 8th respondent at Sl.No.19. However, the petitioner claims to have made the application on 17-07-2001 much prior to the commencement of the new set of Rules. Though the petitioner again made a fresh application on 31-10-2003 after the commencement of the new Rules, the petitioner contends that for the purpose of prior clearance under Section 2 of the Act the respondents ought to have taken into consideration the application initially made by it on

17-07-2001. In support of the said contention, the petitioner relied upon the clarification dated 15-12-2003 given by the Government of India, Ministry of Environment and Forests, stating that the requirement of making the application by the User Agency to the Nodal officer in the format prescribed under the new set of Rules is applicable only to those proposals submitted by the User Agency on 10-01-2003 and thereafter.

Though I find force in the submission that the proposals already made by the User Agency which were under process before 10-01-

2003 cannot be governed by the new set of Rules, I am not inclined to grant the relief as prayed for in the absence of any material to show that pursuant to the application made by the petitioner on 17-07-2001 the petitioner's proposal was received by the Central Government (Ministry of Environment & Forests) as per the Rules in vogue at the relevant point of time and the same was under process for approval under Section 2 of the Act by the date of commencement of the new Rules.

However, as rightly contended by the learned counsel for the petitioner, it is a relevant factor which the respondents ought to have taken into consideration while deciding the priority for grant of clearance under Section 2 of the Act.

Since the said aspect was apparently not considered by the 2nd respondent while registering the petitioner's application at Sl.No.63, I am of the opinion that the matter requires reconsideration on verification of the records with regard to the date of receipt of the petitioner's application by the competent authority under the Rules dated 20-07-1981 and whether the same was under process by the commencement of the new Rules dated 10-01-2003 for clearance under Section 2 of the Act.

Accordingly, the writ petition is disposed of with a direction to the 2nd respondent to make an enquiry as indicated above and to pass appropriate orders in accordance with law after calling for the relevant records from all the concerned Departments and after affording an opportunity to the petitioner as well as the 8th respondent herein. Such exercise shall be completed as expeditiously as possible preferably within a period of eight weeks from the date of receipt of this order. No order as to costs.

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G. ROHINI, J.

Dt. 30-10-2006

klp